



**OFFICE OF THE DISTRICT ATTORNEY  
TENTH JUDICIAL DISTRICT, COLORADO  
J.E. CHOSTNER  
District Attorney**

June 1, 2021

Acting Chief Steve "Chris" Noeller  
Pueblo Police Department  
Pueblo Municipal Center  
200 S. Main Street  
Pueblo, CO 81003

Sheriff Kirk Taylor  
Pueblo County Sheriff's Office  
909 Court Street  
Pueblo, CO 81003

Re: District Attorney CIT Decision Letter  
Officer Involved Incident on August 11, 2020  
Location: 2025 W. 15<sup>th</sup> Street, Pueblo, CO 81003  
Deceased: Lyana Gilmore (DOB: 12/05/1971)  
Officers Involved: Sgt. Dan Rutherford, Cristina Marroquin, Bradley Padilla

Dear Acting Chief Noeller and Sheriff Taylor:

The 10<sup>th</sup> Judicial District Critical Incident Team (CIT) was activated at approximately 11:00 p.m., on August 11, 2020, to investigate an Officer Involved Shooting (OIS) Incident which resulted in the death of Lyana Gilmore (DOB: 12/05/1971). The Pueblo County Sheriff's Office was designated as the lead investigative agency and other CIT participants included the Colorado Bureau of Investigation (CBI), Colorado State Patrol (CSP), Pueblo Police Department (PPD), and the 10<sup>th</sup> Judicial District Attorney's Office (DA). After the investigation, the CIT prepared and submitted an Executive Summary and its investigative reports and materials to the District Attorney's Office for review. Those materials were reviewed, and this is the District Attorney's Decision Letter pursuant to CIT protocol.

**Overview of the Incident**

On August 11, 2020, at approximately 11:00 p.m., at the request of Pueblo Police Department Chief Troy Davenport, the 10<sup>th</sup> Judicial Critical Incident Team (CIT) was activated to assist with the investigation of an Officer Involved Shooting (OIS) involving three (3) Pueblo Police Department (PPD) Officers.

On August 11, 2020, at approximately 10:19 p.m., PPD Officers Bradley Padilla and Cristina Marroquin along with Sgt. Dan Rutherford were dispatched to 2025 W. 15<sup>th</sup> Street, on a home invasion. Dispatch advised responding officers that a female, later identified as Lyana D. Gilmore (DOB: 12/05/1971), broke into the residence. She had a gun in her possession and was pointing it at residents. While inside the residence, Ms. Gilmore went into a bedroom and was threatening Andres Walle (DOB: 07/16/1939) that she was going to kill everyone one-by-one.

Upon officers' arrival, several people exited 2025 W. 15<sup>th</sup> Street and advised officers that Mr. Walle was still inside the residence with the female suspect, Lyana Gilmore. Several seconds later, Ms. Gilmore exited the front door of the residence with a gun in her hand. Police officers ordered Ms. Gilmore to show her hands and put the gun down, but she did not comply and raised the gun in the direction of the officers. The officers, Sgt. Dan Rutherford, Officer Cristina Marroquin, and Officer Bradley Padilla fired their weapons at the female, striking her several times. Fire/Rescue was called to the scene and the female was pronounced deceased.

All PPD Officers involved in the shooting were assigned gate keepers, as per the CIT protocol, and the CIT investigation commenced.

### **Autopsy**

On August 13, 2020, a forensic autopsy was performed by Dr. Daniel Lingamfelter on Lyana Gilmore at St. Mary Corwin Medical Center.

It was discovered that Ms. Gilmore sustained six (6) gunshot wounds: one to the face and chest, one to the right chest, one to the upper left chest, one to the back, one to the left leg, and one to the right leg. The gunshot wound to her upper left chest perforated the lungs and heart. The gunshot wound to her left leg perforated the left popliteal artery and vein resulting in massive blood loss and her subsequent death.

Dr. Lingamfelter determined that Lyana Gilmore died due to multiple gunshot wounds. Methamphetamine was present in Ms. Gilmore's system.

### **Interview: Sgt. Dan Rutherford**

Sgt. Rutherford was interviewed by Pueblo County Sheriff Detective Amy Lile and CBI Agent Kevin Koback. Sgt. Rutherford was asked to describe what occurred on August 11, 2020. He indicated he was on a call with Officer Mulder when he heard the call go out that there was an active home invasion with a party armed with a gun. The address given by dispatch was 2025 W. 15<sup>th</sup> Street. Sgt. Rutherford described this as a high priority call. He recalled Officer Marroquin already on-scene when he arrived and went over to Officer Marroquin's location. Sgt. Rutherford could hear neighbors reporting a female had pointed a gun in their face and made threats about killing them one-by-one. The neighbors pointed out the address and reported there was an elderly male in the residence.

Based on the information he had received, Sgt. Rutherford directed officers to go around to the back of the residence. He stated he did not want to rush and have an active shooter or create jeopardy. He also did not want to place the elderly male in the residence in danger.

As Sgt. Rutherford was walking to the front of the residence with Officer Marroquin, he explained they had some concealment because there was a fence, but the fence did not provide complete cover. Sgt. Rutherford also stated, as he tried to approach the front of the house, he felt he had pushed Officer Marroquin out in the open more than he was.

Sgt. Rutherford then reported he observed movement and the female suspect exited the residence. He immediately engaged the female party. He started to tell her to "show her hands" as he scanned her hands and observed the weapon rise toward him and Officer Marroquin. Sgt. Rutherford described the gun as a silver colored revolver, and it was in the female suspect's right hand. Sgt. Rutherford stated he did not have time to aim and immediately pressed his gun forward as he felt Officer Marroquin's life was in jeopardy. He stated that he thought the female suspect was within 10-feet of him and Officer Marroquin. Sgt. Rutherford felt Officer Marroquin was going to get killed and remembered firing three (3) rounds. He aimed for center mass. He also reported he had heard one shot. Sgt. Rutherford stated they had been trained to "stop the threat" and then re-assess the situation. While the female suspect was on the ground, Sgt. Rutherford observed the gun was still in her hand and her muscles were starting to tense up. He observed Officer Padilla standing in a position where he thought the female could kill him. Sgt. Rutherford stated he put his gun back on her as other officers started to cuff her. He was concerned that there could have been another gun that no one could see.

He stated that he could see the female's muscles flexing as he was standing over the top of her. He could also see blood coming from her mouth and believed she was shot in the upper chest. Sgt. Rutherford stated he was in the military, and from his experience of being involved in prior shootings, he knew he needed to apply pressure and elevate. He was also trying to make sure medical personnel was dispatched to try and save the female suspect's life.

Sgt. Rutherford stated that the adrenaline was getting to him and he is a "walker", so he started to try to breathe and calm himself down. He thought of what to order next, so he told other officers to put up crime scene tape and start a crime scene log. When officers checked on him, he recalled he had said something about the female suspect "rushing them with a gun". Sgt. Rutherford then instructed Sgt. Sincerbox to "take over the scene".

Sgt. Rutherford commented he was in the drop program and was going to retire. He said he could have gone his whole career without having to do that. Sgt. Rutherford stated he felt citizens were in danger during this incident. Sgt. Rutherford stated when the female suspect engaged him, he felt she was forcing the situation, and while he told her to show him her hands, she was running toward them to the point that she came within 5- to 10-feet from him before he pressed the target.

Sgt. Rutherford stated when his gun came out of the holster the body worn camera activated and started recording. He stated he got his gun out his holster early, as it was a new holster and he was not familiar with it, and they always have to "break them in" and get used to a new holster.

Sgt. Rutherford remembered airing that they had movement in the house and the next thing he knew was the female suspect was coming out of the front door at him and Officer Marroquin. He stepped out around the fence and felt he pushed Marroquin out in the open and used his weapon light to distort the female suspect's vision. He shot and moved backwards and possibly to the right as he thought he was possibly shot when he heard the shot go off. Sgt. Rutherford stated he felt the female suspect was a danger to the community as she had already entered a residence with a gun and held people at gun point. When the female suspect came out and started to point the gun, he thought Officer Marroquin would get killed.

Sgt. Rutherford stated he has had basic firearms training, in-service training, simulation training and has never failed to qualify. Sgt. Rutherford stated he participates in qualifications twice a year.

When asked if he could have backed out and called SWAT, he stated that based on the situation, he did not even have time to get officers to the back of the house before the female suspect exited the residence and engaged them.

### **Interview: Officer Cristina Marroquin**

Officer Cristina Marroquin was interviewed by PCSO Detective Amy Lile and CBI Agent Kevin Koback. Officer Marroquin was asked to describe what occurred on August 11, 2020. She stated she had just started her shift and was going to assist on a call on the Eastside when a high priority call went out. Officer Marroquin then responded to the high priority call. She noted the address of the call and noticed it was an address of persons she considered to be family. Dispatch indicated a home invasion with a female armed with a handgun and was inside the residence. Officer Marroquin stated that this was an "in-progress" call and that the family was reported to still be in the home.

When Officer Marroquin arrived, she observed the reporting party, Nancy Walle, in the street. Officer Marroquin stated she knew Nancy Walle. She considered her an aunt and indicated that Nancy Walle basically raised her. The reporting party, Nancy Walle, told Officer Marroquin that her father was inside the residence. Officer Marroquin stated she knew the victims in this case. She explained she was more emotional when she saw people, that she considered family calling for help, but indicated that this did not change how she responded.

When Officer Marroquin arrived, she saw Nancy's son, Jonathan, and Nancy's mother, Genovena, exit the house.

Officer Marroquin stated she was the first to arrive on-scene and initially did not see any other officers, then noticed Sgt. Rutherford arrive. She observed Sgt. Rutherford run up and the next thing she knew was Sgt. Rutherford told her there was movement. Officer Marroquin stated she did not initially notice anything and then a lady started to charge out of the house.

Officer Marroquin remembered telling the female to "show her hands". Officer Marroquin observed a gun in her right hand and thought, "Oh God. Please tell me that is not a fucking gun." Officer Marroquin thought the female was going to shoot one of the officers or a citizen behind

them. Officer Marroquin then shot and observed the female suspect fall to the ground. Afterwards she went to get the gun out of the female suspect's hand. She stated the female suspect was holding onto the gun tightly and she had to apply pressure with her foot to be able to kick the gun out of the female suspect's hand.

Officer Marroquin reported the property owners did not know the female. She also reported the suspect did not look "human". She did not listen to commands.

Officer Marroquin reported she drew her weapon as soon as she exited her patrol unit because the call reported a home invasion with a female with a gun. She stood by the fence for concealment waiting for cover.

Officer Marroquin stated when the door opened it looked like the female was angry when she charged out of the house. Officer Marroquin observed the silver revolver in her hand and felt there was a credible threat. She looked at her sights on her gun and shot for the center mass on the female suspect. She did not report how many times she fired her gun. Officer Marroquin stated she did not recall beyond this part of the incident. She reported again that she retrieved the revolver out of the suspect's hands when the female fell to the ground.

#### **Interview: Bradley Padilla**

Officer Padilla was interviewed by PCSO Detective Amy Lile and CBI Agent Kevin Koback. Officer Padilla was asked to describe what occurred on August 11, 2020. He stated he had just started his shift. A high priority call came through dispatch concerning a home invasion. The call came in with parties still inside the residence and a female party with a gun entering the home. Officer Padilla drove with his lights and siren activated to the call. He stated that dispatch updated the call and stated members of the residence were out of the house except for an elderly male that was left inside with the armed female. Officer Padilla stated that other officers had already arrived. Due to the nature of the call, Officer Padilla felt like there could be a hostage situation. He stated that when he arrived and got out his patrol unit, he chambered a round in his rifle, and started to run toward the house.

Once on-scene, Officer Padilla observed Sgt. Rutherford and Officer Marroquin in front of the house by a fence. Sgt. Rutherford asked him to go to the back of the house. Officer Padilla stated he went toward a gate and a female was at the gate trying to open it. Officer Padilla asked the female to step back and he opened the gate. At that time, Officer Padilla stated he could hear Sgt. Rutherford and Officer Marroquin yell "show me your hands". He got into a low "ready" position with his rifle. Officer Padilla stated he could see the front door, but his view was partially blocked by a vehicle that was parked on the property. He stated he observed the silhouette of a person come out of the door and started to head toward the location of Sgt. Rutherford and Officer Marroquin. At this time, he heard both officers yelling. Officer Padilla stated he saw the female suspect and she had a revolver in her right hand. Officer Padilla observed the female suspect run toward officers. He decided he needed to "take action" and shot his rifle. He stated she might have been falling forward when he was pressing the trigger. He followed through with a second shot.

Officer Padilla stated he observed Officer Marroquin walk up and kick the gun out of the female suspect's hand and yelled to step back until the scene was safe. He then approached the female suspect and flipped her over. He did not think there was much he could do, medically, so he did not render aide. Padilla explained he did not think he should do chest compression since she was shot in the chest.

Officer Padilla was told to clear the house. He did see an elderly man at the door. He assisted in clearing the house and then was given a gate keeper. Officer Padilla said the only manipulation he did to his rifle was to put it back on safe.

Officer Padilla stated the suspect was clearly close enough to use the gun on Sgt. Rutherford and Officer Marroquin. He also watched the female suspect disobey commands given by officers. Officer Padilla also said he looked beyond the female suspect for the safety of others prior to shooting. He stated he qualifies every quarter of the year. Officer Padilla stated he did not have a flashlight that evening but there was enough ambient light for him to see. He also stated he shot to protect the two officers he watched the female suspect run toward.

### **Summary of Officers' Body Worn Cameras**

Sgt. Dan Rutherford and Officer Marroquin were standing side-by-side. Their body worn cameras both showed Ms. Gilmore exit the residence with a gun in her right hand and raised it in the direction of the officers. Verbal commands were heard to "drop it" and "drop the gun before the shots are fired". While the officers fired their weapons, the female suspect can be seen being struck with projectiles and fall to the ground with a gun in her right hand. Verbal commands were being given to "drop the gun". Officers approached and checked Ms. Gilmore for a pulse. Sgt. Rutherford and Officer Marroquin were removed from the scene and their body cameras were eventually turned off.

Officer Padilla was observed on the eastside of the residence and entered through a chain link gate. As he entered the yard, Ms. Gilmore was observed to be at the back of a vehicle in the yard with a gun raised. Shots are heard being fired by Sgt. Rutherford and Officer Marroquin as Officer Padilla fired his weapon as well. Ms. Gilmore was observed falling to the ground with a gun in her right hand.

### **In-Car Dash Camera Review**

Officer Marroquin's vehicle was parked east of the location, 2025 W. 15<sup>th</sup> Street, with the opening of the wooden fence at the driveway and was facing west. The camera did not capture the shooting incident due to it taking place in the yard. Residents were observed exiting the residence of 2025 W. 15<sup>th</sup> Street and were standing in the street in front of Officer Marroquin's patrol car. Residents were observed running for safety when the shots were heard.

Officer Padilla's patrol vehicle was parked in the street east of 2025 W. 15<sup>th</sup> Street, facing West. His vehicle was behind three other Pueblo Police Department vehicles. The shooting was not captured on the in-car dash camera, only the audio of the shots and radio traffic were captured.

Residents of 2025 W. 15<sup>th</sup> Street were observed running for safety and hiding behind patrol vehicles as the shots were being fired.

#### **Other Officer's Interview** **PPD Officer Alan Peil**

On August 12, 2020, PCSO Detective Amy Lile and PPD Detective Shawn Davis interviewed Pueblo Police Department Officer Alan Peil who was on-scene during the incident.

Officer Peil worked "Watch 4" beginning at 10:00 p.m. to 8:00 a.m. He was typically assigned to "Quad 3" which covered a portion of the southside of the City of Pueblo.

Officer Peil stated he was at PPD and loaded items into his fully marked patrol unit when he heard a "3 beeper" come out for 2025 W. 15<sup>th</sup> Street. Officer Peil explained that a "3 beeper" is a high priority call. Officer Peil told dispatch he would be "en-route".

Upon arrival, Officer Peil said he was the third of four officers on-scene. Officer Peil initially approached the front of the house when he was told by Sgt. Rutherford to "enter through a different gate". Officer Peil then walked toward Officer Bradley Padilla and a female who was unlocking a gate on the property for officers to enter through. Officer Peil said he was behind Officer Padilla when Officer Padilla fired his weapon. Officer Peil said he was unable to see anything at that time, but heard other officers give verbal commands.

Officer Peil was with Officers Padilla, Marroquin and Sgt. Rutherford when they approached the suspect and he assisted in handcuffing the suspect. Officer Peil said medical personnel responded, but ultimately said "no life saving measures could be performed". Officer Peil said the gun, which the suspect initially had, was removed by Officer Marroquin, and appeared to be a "snub nose revolver".

#### **Other Witness Interviews** **Andres Walle**

On August 12, 2020, PCSO Detective JC Williams and PPD Detective Ryan Torres interviewed Andres Walle, (DOB: 07/16/1939). Mr. Walle was 81 years of age and was the party who exited the residence after the suspect came out of the house. Mr. Walle spoke very little English and Detectives had difficulty trying to communicate with him but were able to ascertain the following:

Mr. Walle stated he lived at the residence of 2025 W. 15<sup>th</sup> Street along with his wife, Genovena Walle; their daughter, Nancy Walle; Nancy's son, Jonathan Bonilla; and Jonathan's daughter, Brittany Bonilla. Brittany was approximately seven years of age and was at the neighbor's house across the street from 2025 W. 15<sup>th</sup> Street. Mr. Walle explained the home belonged to their daughter, Nancy. He stated Genovena and himself were from Los Angeles, California, and moved here approximately one month ago to live with Nancy. Detectives later learned that Nancy worked as a Mental Health Therapist at a Correctional Facility in Pueblo. Nancy arranged for her parents to move here from California.



Mr. Walle told Detectives about the events that took place that evening. He spoke of being in bed asleep along with his wife, Genovena, when they heard some type of commotion coming from outside their bedroom. Mr. Walle stated Genovena got out of bed to see what was going on. Mr. Walle remained in bed and as his wife opened the door, a lady came into the room. Mr. Walle stated he was confused as to what was going on and thought the female was his daughter, Nancy. The female kept saying that someone was going to kill her. Mr. Walle's asked the person, "WHO IS GOING TO KILL YOU?" Mr. Walle said he got out of bed and tried to open the bedroom door and found that someone had been holding the door shut.

Mr. Walle stated several times that he did not know who this person was. He had only known that it was a female and he saw her hair. He said the female did not do anything to him and she only said, "someone was going to kill her". Mr. Walle said it was dark and he could not see anything.

Mr. Walle stated shortly thereafter the female had left the room. Mr. Walle stayed in the room and could not move easily as he has some issues with his legs. Mr. Walle stated shortly after the female left his room, he heard what sounded like gunshots coming from outside. Mr. Walle then got out of bed and was able to make it outside of the residence where the rest of the family was located.

Mr. Walle stated that as he went outside, he saw the female on the ground. Mr. Walle stated he did not see anything take place during the shooting, as he was still inside of his bedroom. Mr. Walle stated that he believed that the female shot at the police first, but he did not witness any part of the incident. Mr. Walle thought he had heard three or four shots, but he was unsure. Mr. Walle did not believe his family had any problems with anyone in the neighborhood.

### **Genovena Walle**

On August 12, 2020, PCSO Detective JC Williams and PPD Detective Ryan Torres interviewed Genovena Walle, (DOB: 02/02/1951), the wife of Andre Walle. Ms. Walle stated that she and her husband were asleep in their bedroom. Ms. Walle thought it was around 9:30 p.m. or 10:00 p.m., when she heard a commotion coming from the living room area. She then heard her grandson say, "Who is this?"

Ms. Walle stated she got out of bed to see what was going on. As she opened her bedroom door, a female went by her and went into the bedroom. Ms. Walle said after the female entered the bedroom, she (Ms. Walle) held the door closed and told her daughter to call the police.

Ms. Walle could not describe the person but was sure the suspect was female. Ms. Walle had not seen anything in her hands and stated, "It all happened very fast".

Ms. Walle told Detectives how she held the door closed until police arrived. She thought the police arrived very fast. She was worried about her husband being in the room with the female, but she thought the family would be safer outside the home. Ms. Walle told Detectives that the female did not try opening the bedroom door while she was holding it closed.

As soon as the police arrived, the family exited the home. Ms. Walle said her husband was still inside the bedroom with Ms. Gilmore, as everyone else left the house.



Ms. Walle said the police officers had the family get behind them. She then heard the police yelling, "Put the gun down". Ms. Walle then heard gunshots. Ms. Walle said that the neighbor across the street (Theresa) told them that the same female had previously tried to get into her house.

Ms. Walle had no idea what was going on with the suspect or what she had wanted from them. Her husband would later tell her that the female kept telling him, "someone wanted to kill her".

Ms. Walle then indicated that the family was transported to the Pueblo Police Department.

### **Nancy Walle**

On August 12, 2020, PCSO Detective Victor Herrera and PPD Detective Jonathan McCluskey interviewed Nancy Walle (DOB: 03/26/1972).

Ms. Walle stated a little after 10:00 p.m., she had been talking with her family in the living room area of the home. Ms. Walle said she was sitting with her mom, Genovena Walle, her son, Jonathan Bonilla, and her granddaughter, Brittany Bonilla. Her son looked toward the front door and said, "What are you doing here?" Ms. Walle said she turned around and saw a female, identified as Lyana Gilmore, in her residence. Ms. Walle said she told the female to leave numerous times. The female told her she couldn't because people were after her and wanted to harm her.

Ms. Walle said she told the female once again to leave and the female gestured to her left side of her waistband. Ms. Walle then noticed a gun in the female's waistband and saw a white color handle of the gun. Ms. Walle said she didn't want to escalate the situation or agitate her any further, so she told the family to go to the back bedroom inside the home. Ms. Walle said her elderly father, Andre Walle, was sleeping in another room, so she closed the door in hopes the female wouldn't see him inside the home.

Ms. Walle said the female appeared to be paranoid and possibly under the influence of drugs. Ms. Walle said she looked outside and didn't see anyone, so she ran across the street to a neighbor's residence for help. Ms. Walle said she knocked on the neighbor's door and was trying to get their attention to get them to see what was going on. Ms. Walle said she ran back into her residence and her mother, Genovena, was standing outside of her father's bedroom. Ms. Walle said she was told that the female was in the bedroom with her father and the door was closed. Ms. Walle said she asked the female to let her father out of the room, but the female told her she was going to kill them one-by-one. Ms. Walle said she and the other family members exited the residence while she was on the phone with dispatch reporting the incident.

Ms. Walle said officers arrived and asked her questions which she informed them; her father was still inside the residence with the suspect. Ms. Walle said she recalled the female suspect telling her someone wanted to kill her. Ms. Walle said the female never pulled out the gun but seemed unstable. Ms. Walle said she pulled her mother back away from the fence and when doing so she heard gunshots. Ms. Walle did not remember much right before the gun shots. Detectives asked Ms. Walle if the female suspect forced her way into the home, to which she stated she didn't

believe she did. Ms. Walle said they usually lock the door but assumed it was left unlocked as she didn't hear anything until her son noticed her already inside the home. Ms. Walle said she had never seen the female before and didn't know who she was. Ms. Walle said, after the shooting, she spoke with a neighbor who said the female had been knocking on their door before, but they didn't answer it. Ms. Walle said she hadn't lived in the neighborhood long as she recently moved into the house a few months ago from California. Ms. Walle said she came to Pueblo for a job at the San Carlos Prison as a Mental Health Therapist. Ms. Walle said she hadn't noticed anything suspicious or concerning in the neighborhood.

### **Jonathan Bonilla**

On August 11, 2020, PCSO Detective Ryan Landreth and PPD Detective Ron Gravatt interviewed Jonathan Bonilla (DOB: 10/01/1991).

Mr. Bonilla indicated that the female suspect entered through the front door while he and members of his family were in the living room. The female suspect stated someone was chasing her. Mr. Bonilla stated he thought she had a gun. Mr. Bonilla indicated he had had a few beers and was trying to get the event accurate. In the house with him was his daughter, his mother, grandmother, and grandfather. The suspect then said, "I'm going to kill all of you".

Mr. Bonilla told the suspect, if someone was chasing her to go into the room and hide and get away from his family. He stated that either he or his mother took his daughter to the neighbor's house, but his grandmother was upset because the suspect was in a room with his grandfather and his grandmother did not want to leave the home. Mr. Bonilla stated his mother called "9-1-1" and reported the incident.

Mr. Bonilla stated that he was scared for himself and his family and that he had witnessed the female previously run down the street doing the same type of thing.

### **Officer Involved Processing**

On August 11, 2020, PCSO Detective David Butterfield was notified that an officer involved shooting took place. He was tasked with processing any of the officers at the PPD Crime Scene Investigation Lab. The PPD Officers to be processed were Sgt. Dan Rutherford, Officer Cristina Marroquin, and Officer Bradley Padilla.

Each officer was brought down to be processed one at a time and the following actions were taken.

Once in the office full body pictures were taken, they were then placed in a dark room where an Alternate Light Source (ALS) was scanned over the body. The process was completed by running a bright white light over their uniform and exposed skin to identify any biological evidence. A possible blood stain was located on Officer Padilla's black glove. The gloves, along with the firearms with potential discharges, were collected as evidence. All of the items were transported to a secured processing lab for the Pueblo County Sheriff's Office and placed into evidence. Several of these items were sent to CBI for inspection.

Once the ASL light procedure was completed, a download of their weapons was conducted.

Sgt. Rutherford carried a Smith and Wesson M&P 9mm handgun (Serial Number: HTU4983) with three magazines. The magazine in the gun contained 14 live cartridges out of a possible 17. There were two separate magazines from a holster which contained 17 live cartridges each out of a possible 17 each. One live cartridge was recovered from the chamber of the weapon. In total, there were 49 live cartridges out of a possible 52, so there were potentially three discharged cartridges from the weapon. No other firearms were used.

Officer Cristina Marroquin carried a Glock 17 9mm handgun (Serial Number: BDKR007) with three magazines. The magazine in the gun contained 13 live cartridges out of a possible 17. There were two separate magazines from the holster that which contained 17 live cartridges out of a possible 17. One live cartridge was recovered from the chamber of the weapon. In total, there were 48 live cartridges out of a possible 52, so there were potentially four discharged cartridges out of the firearm. No other firearms were used.

Officer Bradley Padilla carried a Sig P320 9mm handgun (Serial Number: 58J075240) with three magazines. The magazine in the gun contained 21 live cartridges out of a possible 21. There are two separate magazines from the holster that contained 21 live cartridges each out of a possible 21 each. One live cartridge was recovered from the chamber of the weapon. There was a total of 64 live cartridges out of a possible 64. There were no discharged cartridges from the weapon.

Also collected from Officer Padilla was Palmetto State Armory PA-15 5.56 rifle (Serial Number: PA011883), the magazine in the gun contained 26 live cartridges out of a possible 30. One live cartridge was recovered from the chamber in the weapon. There was a total of 27 live cartridges out of a possible 30. There was a potential of three discharges from the weapon.

### **Scene and Evidence Processing**

CIT Detectives went to 2025 W. 15<sup>th</sup> Street to process the scene at approximately 1:30 a.m. on August 12, 2020. The scene was secured with crime scene tape and patrol vehicles. A search warrant for 2025 W. 15<sup>th</sup> Street was applied for and signed by a judge. The search was executed at approximately 2:00 a.m. Overall photographs were taken of the scene. The residence was a single-story home with a fence surrounding the entire property. There was an opening in the fence at the front of the property where the shooting took place.

Two Pueblo Police Department vehicles (Unit# 360 and #625) were on-scene in the front of the residence. Overall photographs were taken of the vehicles. No signs of forced entry were noticed on the residence.

The following evidence was collected on scene:

- A-F: suspected blood swabs/bone fragment (in the street out front of the residence up to the deceased female);
- #1: projectile (in dirt near mailbox);
- #2 - #8: (7) 9mm spent shell casings (outside of the fence in the dirt);

- #9: .38 5-shot Smith and Wesson revolver (Serial Number: CZP9186) silver with a wood grip fully loaded with 5-.38 Special+P live cartridges (front of residence near the deceased female);
- #10: deceased female identified as Lyana Gilmore;
- #11: projectile (front window seal/shattered window);
- #12 - #13: (2) .223 Rem 16 FC spent shell casings (inside fence east of the house);
- #14: (2) black sandals (west end of street);
- #15: pink/purple broken prescription glasses (west end of street by sandals);
- #16: jacket from projectile (west fence on property);
- #17: defect (west fence) trajectory: 5.8 degrees up to down, 35 degrees left to right;
- #18: defect (west fence) trajectory: 0.2 degree up to down, 43 degrees left to right;
- #19: defect in box/front of residence;
- #20 - #21: (2) .38 Special +P live cartridges (2104 W. 14<sup>th</sup> Street on the street)
- Defect #17 - #17B: passed through the west fence striking the east side of the residence at 2027 W. 15<sup>th</sup> Street, Pueblo, CO 81003. Detectives were unable to recover the projectile. The projectile did not pass through the inside of the residence.
- Defect #18 - #18D: passed through several pieces of wood on the west side of the fence striking the bottom cement portion of the residence at 2027 W. 15<sup>th</sup> Street. Detectives were unable to locate the projectile.
- Defect #19 - #19B went through a box full of clothing on the front porch of 2025 W 15<sup>th</sup> Street striking the stucco on the south west side of the residence. The projectile could have possibly been #1 found by the mailbox. No other projectiles were located near the area.

Medicolegal Death Investigator Jeff Capito arrived on-scene on August 12, 2020, at approximately 3:30 a.m. and pronounced the female, Lyana Gilmore, deceased. Five .38 Special+P live cartridges were found in Ms. Gilmore's left front short's pocket. Ms. Gilmore's body was placed in a white coroner's body bag, sealed with tag number #3587003 and removed from the scene.

CBI responded to the scene to do the FARO scan (a laser scanner that creates 3-D modeling of the scene), the Colorado State Patrol was called to perform measurements of the scene using the Total Station, and the Drone Team responded to perform aerial photographs. Exit photographs were taken by PCSO Detective David Butterfield and the scene was released on August 12, 2020. at approximately 9:30 a.m.

All evidence collected was taken to the Pueblo County Sheriff's Office Annex and placed in the secured evidence processing room.

### **Legal Guidelines**

A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person. Furthermore, he may use a degree of force which he reasonably believes to be necessary for that purpose. C.R.S. 18-1-704(1)

A person is justified in using deadly physical force upon another person in order to defend himself or a third person if he reasonably believes a lesser degree of force is inadequate and he has reasonable grounds to believe, and does so believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. C.R.S. 18-1-704(2)(a)

In evaluating whether a person is justified by self-defense, the person is entitled to act on appearances. People v. La Voie 395 P.2d 1001 (Colo. 1964). The United States Supreme Court evaluated whether officers used excessive force under the Fourth and Fourteenth Amendments by approaching the issue of reasonableness from the prospective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight. Plumhoff v. Rickard, 143 S.Ct. 2012 (2014). In that case officers fired a total of 15 shots at a suspect in a fleeing car that was determined to constitute a grave public safety risk. In its ruling the Court said, "It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." Further, the Court took into account that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation-in circumstances that are tense, uncertain and rapidly evolving.

A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- b) The suspect poses an immediate threat to the peace officer or another person;
- c) The force employed does not create a substantial risk of injury to other persons.

C.R.S. 18-1-707(3)

A peace officer shall identify himself or herself as a peace officer and give clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury, or would create a risk of death or injury to other persons. C.R.S. 18-1-707(4)

## **Conclusion**

Based on the facts of the investigation conducted by CIT investigators, the use of force by PPD Officers Sgt. Dan Rutherford, Cristina Marroquin and Bradley Padilla was justified based on the fear and threat of serious bodily injury or death posed as a result of Ms. Gilmore pointing a gun at Sgt. Dan Rutherford and Officer Cristina Marroquin. Ms. Gilmore entered the residence of 2025 W. 15<sup>th</sup> Street without permission with a gun. While inside the residence of 2025 W. 15<sup>th</sup> Street Ms. Gilmore pointed a gun at the occupants of the residence and threatened to kill the occupants of the residence with the gun. Pueblo Police Department Officers were dispatched to the address of 2025 W. 15<sup>th</sup> Street on a home invasion. When officers arrived, several people exited the residence at 2025 W. 15<sup>th</sup> Street. And advised officers that Mr. Andres Walle was still inside the residence with Ms. Gilmore. Several seconds later Ms. Gilmore exited the front door of the residence with a gun in her hand. PPD Officers Sgt. Dan Rutherford and Cristina Marroquin ordered Ms. Gilmore to show her hands and put the gun down. Ms. Gilmore did not comply and raised the gun at the direction of the officers. Officers Sgt. Dan Rutherford, Cristina Marroquin

and Bradley Padilla fired their weapons because they reasonably believed that Ms. Gilmore would shoot at them and they felt that they were in imminent danger. The conclusion was based on interviews of the involved officers, interviews of the residents of 2025 W. 15<sup>th</sup> Street, body worn camera video, and crime scene and evidence processing.

It was clear that no other means of apprehension was reasonable once Ms. Gilmore raised her gun toward the officers after she was instructed to show her hands and drop the weapon. Ms. Gilmore's immediate reaction of raising the gun toward officers also left insufficient time for any of the officers to verbally announce their intent to use deadly force. The officers were dispatched to a call regarding a home invasion with a woman pointing a gun at the residents. Therefore, the officers were justified in trying to arrest Ms. Gilmore for First Degree Burglary, a class three felony and Felony Menacing, a class five felony which involves the use or threatened use of deadly physical force. Additionally, Ms. Gilmore posed an immediate threat to the officers on the scene and to the residents of 2025 W. 15<sup>th</sup> Street one of whom was still inside the residence. When each officer fired their weapon, they all had a clear site on Ms. Gilmore without any other bystander or citizen visibly in harm's way of the force that they needed to employ. Therefore, there was no substantial risk of injury to anyone other than Ms. Gilmore when the officers fired their weapons.

There was no evidence or facts collected to support any criminal wrongdoing by Officers Sgt. Dan Rutherford, Cristina Marroquin and Bradley Padilla during the Officer Involved Shooting incident. The actions taken by the officers during the OIS incident were conducted with the justified belief that either their lives, the lives of fellow officers or the lives of the residents of 2025 W. 15<sup>th</sup> Street were in jeopardy.

It is my conclusion based on the circumstances that Officers Sgt. Dan Rutherford, Cristina Marroquin and Bradley Padilla were justified by the Defense of Self and Defense of Others provisions of the laws of the State of Colorado, and Colorado Senate Bill 217, in using the actions they employed to defend both themselves, fellow officers and the residents of 2025 W. 15<sup>th</sup> Street from what they reasonably believed to be the imminent use of unlawful physical and deadly force by Lyana Gilmore, and they reasonably believed that a lesser degree of force would be inadequate. They had reasonable grounds to believe, and did believe, that they, their fellow officers and the residents were in imminent danger of being killed or receiving great bodily injury. The actions of all three officers based on their own observations and perceptions, and their actions were reasonable.

Given the facts and circumstances of the situation and the governing law, criminal charges against Officers Sgt. Dan Rutherford, Cristina Marroquin and Bradley Padilla would not be appropriate, and therefore no criminal charges will be filed.

Dated this 1<sup>st</sup> day of June, 2021.



J.E. Chostner  
District Attorney